

NO. 76321-6

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

DAVID McDONALD, ET AL.,

Petitioners,

v.

SECRETARY OF STATE SAM REED, ET AL.,

Respondents.

and

GOVERNOR-ELECT DINO ROSSI, a Washington Citizen and Elector,
and WASHINGTON STATE REPUBLICAN PARTY, an unincorporated
association,

Applicants-Intervenors.

MOTION TO INTERVENE OF GOVERNOR-ELECT DINO ROSSI and
the WASHINGTON STATE REPUBLICAN PARTY

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IDENTITY OF MOVING PARTY AND RELIEF SOUGHT

Applicants, Governor-Elect Dino Rossi and the Washington State Republican Party seek to intervene in this action.

On November 17, 2004, Defendant Secretary of State Sam Reed announced the official results of the November 2, 2004, general election. Dino Rossi was determined to have won the Governor's race by a margin of 261 votes. *See* http://www.secstate.wa.gov/office/news_releases.aspx. Pursuant to RCW 29A.64.021, because the margin of victory was fewer than 2000 votes, the Secretary of State ordered a machine recount of the votes in the race for governor. When the votes were re-tabulated, Dino Rossi again prevailed. Pursuant to RCW 29A.60.250, the Secretary of State certified the results and confirmed Rossi as the Governor-Elect on November 30, 2004. Not satisfied with the results of the two tabulations of the votes, petitioners have sought a manual recount under RCW 29A.64.011.

In addition, by their complaint in this action, petitioners seek not just a recount of the votes but also to expand the universe of potential ballots to be counted. In so doing, they attempt to turn Washington election-law on its head. They seek not just the "retabulation" of votes provided for by RCW 29A.04.139; they now want to force the Secretary of State to require a re-examination of thousands of ballots whose validity

has already been determined by the canvassing boards of Washington's 39 counties.

Governor-elect Rossi and the Washington State Republican Party move to intervene in these proceedings (1) to protect their interests and (2) to oppose the injunction sought by petitioners David T. McDonald, the Washington State Democratic Central Committee, et al. that affects the fair administration of Washington's election laws and violates the rights under those laws of Governor-Elect Rossi, the Republican Party, and individual voters.

Counsel for Petitioners and counsel for all Respondents who have been served have indicated they do not contest this Intervention.

An Answer in Intervention is filed herewith.

FACTS RELEVANT TO THE MOTION

The Republican Party is an unincorporated association functioning as a political party that endorses, promotes, and acts on behalf of candidates for offices in Washington. *See* Declaration of Christopher Vance Supporting Washington State Republican Party's Motion to Intervene ("Vance Dec.") at ¶ 2.

Governor-Elect Dino Rossi was the Republican candidate for governor in the November 2, 2004, general election. He twice won the tabulation of the votes in that race, which the Secretary of State certified

on November 30, 2004. *See*

http://www.secstate.wa.gov/office/news_releases.aspx.

The Republican Party has an interest in ensuring that lawful election procedures are followed and that ballots are counted in accordance with the law. Those interests are directly affected by this litigation in which election procedures and rules are being “re-evaluated and reinterpreted. Governor-Elect Rossi obviously also has an interest in ensuring that Washington’s election procedures and rules are correctly implemented in the pending third tabulation of ballots. The disposition of this litigation without the Republican Party’s and Governor-Elect Rossi’s participation will impair their ability to protect those interests. Their interests are not adequately protected by the existing parties because none act on behalf of the interests of the Party or Governor-Elect Rossi. *See Vance Dec. at ¶ 3.*

Counsel for Petitioners and for the Respondents who have been served do not contest this motion to intervene.

GROUND FOR RELIEF AND ARGUMENT

Applicants satisfy the requirements for intervention under the Civil Rules for Superior Court, and they should be allowed to intervene in this original action in the Supreme Court.

Under CR 24(a)(2) an applicant may intervene by right when the applicant claims an interest relating to the property or transaction that is the subject of the action and when he is so situated that disposition of the action may as a practical matter impair or impede his ability to protect that interest when the applicant's interest is not adequately represented by an existing party. CR 24(a)(2).

Washington courts routinely grant an applicant's motion to intervene when the four requirements of CR 24(a)(2) are met: (1) timely application for intervention; (2) the applicant claims an interest which is the subject of action; (3) the applicant is so situated that the disposition will impair or impede the applicant's ability to protect the interest; and (4) the applicant's interest is not adequately protected by the existing parties. *See Spokane County v. State*, 126 Wn.2d 644, 649 (1998). The meaning of "interest" is to be broadly interpreted and should "be of such a direct and immediate character that the Intervenor will either gain or lose by the direct legal operation and effect of the judgment." *Westerman v. Cary*, 125 Wn.2d 277, 303 (1994) (quoting *In re J.H.*, 117 Wn.2d 460, 468 (1991)). Finally, courts should grant applications for intervention of right unless it would cause a hardship for one of the original parties. *See Loveless v. Yantis*, 82 Wn.2d 754, 759 (1973).

Similarly, under CR 19(a) a person “shall be joined in the action” if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may impair or impede his ability to protect that interest or leave persons already parties subject to inconsistent obligations by reason of his claimed interest.

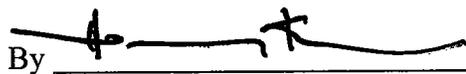
Governor-Elect Rossi has won both times the ballots have been counted. By seeking changes in the way ballots are counted in the third tabulation plaintiffs have requested, plaintiffs plainly hope to find a way to change the outcome of the election. Governor-Elect Rossi and the Republican Party have a direct interest in the outcome of these proceedings that will determine whether or not plaintiffs can impose changes in the rules and/or procedures by which ballots are tabulated. Governor-Elect Rossi and the Republican Party should be allowed to intervene to assure that Washington’s election laws are followed and correctly applied. Because their interests are likely to be compromised by any proceedings conducted in their absence, they are also indispensable parties, and they should be joined.

CONCLUSION

For the foregoing reasons, Governor-Elect Rossi and the Republican Party should be granted the right to intervene in, or be joined as an indispensable party to, these proceedings (1) to protect their interests and (2) to oppose any injunction or other relief sought by the plaintiffs that would affect the fair administration of Washington's election laws.

RESPECTFULLY SUBMITTED this 6th day of December, 2004.

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CERTIFICATE OF SERVICE

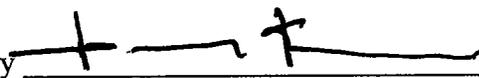
I hereby certify that on this 6th day of December, 2004, I electronically filed at supreme@courts.wa.gov the foregoing document with the Clerk of the Washington State Supreme Court. Copies have also been electronically served on the following:

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